

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

March 3, 2003

RESPONSIBLE STAFF:

Fred Felton, Assistant City Manager
Erica Shingara, Environmental Specialist

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
X	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	3/3/03
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:

Introduction of an Ordinance to Amend Chapter 8 of the City Code Entitled "Erosion and Sediment Control and Stormwater Management," Article I, Entitled "General," Section 8-1, Entitled "Definitions," Article III, Entitled "Stormwater Management," Section 8-31, Entitled "Appeals" and Section 8-33, Entitled "Penalties" and to Create New Article IV, Entitled "Stormwater Quality Management and Discharge Control," to Enact Requirements, Enforcement, Penalty and Appeal Procedures With Respect Thereto

SUPPORTING BACKGROUND:

In order to meet the requirements of the Clean Water Act and obtain a National Pollutant Discharge Elimination System (NPDES) Phase II permit, the City must have an ordinance that prohibits non-stormwater discharges into the storm drain system with appropriate enforcement and penalty procedures.

Chapter 8 of the City Code governs erosion and sediment control and stormwater management; however, it currently does not make any reference to non-stormwater discharges. Therefore, the proposed amendments to Chapter 8 add definitions and create Article IV. Stormwater Quality Management and Discharge Control.

The proposed changes to Chapter 8 include:

- Provides definitions relating to illicit discharges and connections;
- Prohibits water pollution;
- Provides the City with the authority to enter, investigate, and eliminate illicit discharges;
- Provides enforcement and penalty procedures; and
- Changes a violation of Chapter 8 from a criminal misdemeanor to a municipal infraction.

Attachment:

- Draft Amendment to Chapter 8 of the City Code.

DESIRED OUTCOME:

Introduce draft amendment to Chapter 8, and notify the public that a public hearing will be held on March 17, 2003.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 8 OF THE CITY CODE ENTITLED "EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT," ARTICLE I, ENTITLED "GENERAL," SECTION 8-1, ENTITLED "DEFINITIONS," ARTICLE III, ENTITLED "STORMWATER MANAGEMENT," SECTION 8-31, ENTITLED "APPEALS" AND SECTION 8-33, ENTITLED "PENALTIES" AND TO CREATE NEW ARTICLE IV, ENTITLED "STORMWATER QUALITY MANAGEMENT AND DISCHARGE CONTROL," TO ENACT REQUIREMENTS, ENFORCEMENT, PENALTY AND APPEAL PROCEDURES WITH RESPECT THERETO.

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 8 of the City Code, Article I is hereby amended and a new Article IV is adopted to read as follows:

Chapter 8
Erosion and Sediment Control and Stormwater Management

Article I. General

Sec. 8-1. Definitions.

* * * * *

Illicit connection. Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the public stormwater system without a permit; including but not limited to any conveyances which allow sewage, process wastewater, and wash water to enter the public stormwater system and any connections to the public stormwater system from indoor drains and sinks with potential to introduce pollutants to the public stormwater system.

Illicit discharge. Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Article IV, Section 35 of this chapter.

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National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permits. General, group, and individual stormwater discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act.

Nonpoint source. A diffuse source of pollution that does not result from a pollutant discharge at a specific, single location (such as a single pipe) but generally results from human or human-induced activities which introduce pollutants into waters of the state in the city through land runoff, precipitation, atmospheric deposition, or percolation.

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Point source. Any discernable confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which any pollutant is or may be discharged.

Pollutant. Any liquid, gaseous, solid, radioactive, hazardous, or other substance which, when discharged directly or indirectly into waters of the state in the city as a point source or nonpoint source, or when applied to or stored on natural or man-made land surfaces, subsurfaces, or other surfaces connected to these surfaces in a manner other than as authorized by applicable permits or regulations, has potential to or does:

1. interfere with state or county designated uses;
2. obstruct or cause damage to waters of the state in the city;
3. change water color, odor, or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater;
4. add an unnatural surface film on the water;
5. adversely change other chemical, biological, thermal, or physical conditions in any surface water or stream channel;
6. degrade the quality of ground water; or
7. harm human life, aquatic life, or terrestrial plant and wildlife.

Pollutant includes but is not limited to any dredged soil, solid waste, incinerator residue, sewage, garbage, wastewater, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, medical waste, sediment, nutrient, toxic substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance, and oxygen demanding material.

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Storm Drain System. Publicly-owned facilities operated by the city by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures which are within the city and are not part of publicly owned treatment works.

Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from rain storm events.

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Article III. Stormwater Management.

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Sec. 8.31. Appeals.

Any person aggrieved by the action of any official charged with the enforcement of [this article,] articles II or III of this chapter as the result of the disapproval of a properly filed application for a permit, issuance of a written notice of violation or an alleged failure to properly enforce the articles in regard to a specified application, shall have the right to appeal the action to the city board of appeals. The appeal shall be filed in writing within thirty (30) days of the date of official transmittal of the final decision or determination to the applicant, shall state clearly the grounds on which the appeal is based and shall be processed in the manner prescribed for hearing administrative appeals contained in chapter 24 of the City Code.

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Sec. 8.33. Penalties.

[Any person convicted of violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment not exceeding one year or both for each violation with costs imposed in the discretion of the court. Each day that a violation continues shall be a separate offense.]

- (a) Violations of this article are declared to be municipal infractions and enforceable pursuant to the provisions of Section 1-9 of this Code. The maximum penalty for each initial and repeat violation shall be established by the City Council.
- (a) In addition thereto, the city may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this article or to correct violations of this article, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.
- (a) In addition to any other sanction under this article any person who fails to install or maintain stormwater management controls and facilities in accordance with a plan approved by the City shall be liable to the City or state in a civil action for damages. Any action instituted under subsections (b) and (c) of this section shall include the recovery of all costs incident to such enforcement action, including attorneys, consultants and witness fees, discovery and administration costs and any court of competent jurisdiction shall have the authority to award such fees and costs in any enforcement related proceeding.

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Article IV. Stormwater Quality Management and Discharge Control

Sec. 8-34. Purpose and authority.

The purpose and intent of this article is to ensure the health, safety, and general welfare of citizens, and to protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. '1251 et seq.) by reducing pollutants in stormwater discharges to the maximum extent practicable and by prohibiting non-stormwater discharges to the storm drain system.

The federal National Pollutant Discharge Elimination System (NPDES) and state water quality standards require that the city establish a regulation governing discharges into protected waters of the state. To accomplish the purposes of this article, the city must work in conjunction with municipalities, counties, agencies of the state, and the federal government to establish interagency agreements and to take other steps necessary to accomplish the purposes of this article.

Sec. 8-35. Applicability.

This article shall apply to all water entering the storm drain system generated on any developed or undeveloped lands lying within the City of Gaithersburg including any amendments or revisions thereto.

Sec. 8-36. Limitation on Coverage.

- a) This article authorizes the following non-stormwater discharges when properly managed: landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering runoff, flows from riparian habitats and wetlands, residual street wash water, and discharges or flows from fire fighting activities.
- b) Stormwater discharges that are mixed with non-stormwater or stormwater associated with industrial activity are not authorized to discharge under this general permit unless such discharges are:
 - 1) In compliance with a separate NPDES permit; or
 - 2) Identified by and in compliance with the general permit.
- c) Stormwater discharges from municipal separate storm sewer systems located on state or federal property are not covered under this chapter.

Sec. 8-37. Responsibility for Administration.

The City Manager or his designee shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the City Manager may be delegated in writing by the City Manager to persons or entities acting in the beneficial interest of or employed by the City.

Sec. 8-38. Prohibition of Water Pollution.

- a) A person must not discharge, or cause to flow from a storage system or other container, any pollutant into waters of the state in the city except in concentration or quantities explicitly authorized by an approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or that are consistent with the utilization of approved best management practices.
- b) A person must not connect any apparatus discharging any pollutant, in any quantity, to any part of the waters of the state in the city except as explicitly authorized by an approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or as results from approved best management practices.
- c) A person must not improperly store, handle, or apply any pollutant in a manner that will cause its exposure to rainfall or runoff and discharge as point source or nonpoint source pollution into waters of the state in the city except in concentrations or quantities authorized by an approved National Pollutant Discharge Elimination System discharge permit or by a plan for compliance, or as results from approved best management practices.
- d) A person must not throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking areas, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

Sec. 8-39. Enforcement.

- a) The city may enter a site at any time during normal business hours, and at other reasonable times, to inspect, investigate, or monitor activities subject to this article. If the person in charge of the site does not consent to any entry by the city, the City Manager or his designee may obtain an administrative search warrant from a court with jurisdiction by showing that reasonable administrative standards for inspecting the site have been met.
- b) If a discharge is observed which represents an immediate hazard to public health or safety, or aquatic life, the City Manager or his designee may enter any property or structure, except a dwelling, as necessary to prevent or stop the hazard.
- c) A person must not hinder, prevent, or unreasonably refuse to permit any inspection, investigation, or monitoring under this article.
- d) Upon finding a violation of this article, the city may issue a notice of violation, stop order, or corrective order to any person causing or permitting the violation.
- e) Any person who causes or permits a violation of this article to occur must submit a plan for compliance when required by the city. A plan for compliance and any amendment to it must be approved by the City Manager or his designee.
- f) A person who has submitted a plan for compliance that has been approved by the City Manager or his designee is not in violation of this article as long as the person acts in accordance with the plan for compliance.
- g) The city may issue a stop work order to any person who violated this article when performing activities authorized by any permit issued by the city.

Sec. 8-40. Penalties.

- a) Violations of this article are declared to be municipal infractions and enforceable pursuant to the provisions of section 1-9 of this Code. The maximum penalty for each initial and repeat violation shall be established by the city council.
- b) In addition thereto, the city may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this article or to correct violations of this article, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief.
- c) Liability for expense caused by a violation:
 - 1) In an immediate danger to the public health or safety, the city must notify the responsible party by the most expeditious means, and the responsible party must remove the illegal discharge or pollutant by the time stated in the notice. If it is not so removed, the city may remove, mitigate, and clean up any illegal discharge or pollutant. The cost of that removal, mitigation, and clean-up must be paid to the city by the person who did not remove, mitigate, and clean up the illegal discharge and pollutant, and is a debt due to the city. The cost of removal, mitigation, and clean-up is a lien upon all real property. The cost of removal, mitigation, and clean-up may be listed on the tax bill and may be collected in the manner of ordinary taxes. This section does not restrict the city from proceeding directly with alternative enforcement procedures.
 - 2) If, after an inspection by the city, the city finds that a pollutant discharge poses an immediate hazard to the public health or safety or to the waters of the state in the city, the city may take action necessary to abate the pollutant discharge, protect the public, and mitigate any damage that the pollutant discharge has caused to the affected waters. Any cost incurred in carrying out actions under this subsection must be paid by the owner as outlined in subsection (1).
 - 3) The City may establish fees and charges necessary to administer and enforce this article.
- d) Any action instituted under subsections (b) and (c) of this section shall include the recovery of all costs incident to said enforcement action, including attorneys, consultant and witness fees, discovery and administration costs. A court of competent jurisdiction shall have authority to award such fees and costs in any enforcement proceedings.

Sec. 8-41. Appeals.

Any person aggrieved by the action of any official charged with the enforcement of this article, as the result of the disapproval of a properly filed application for a permit, issuance of a written notice of violation or an alleged failure to properly enforce the article in regard to a specified application, shall have the right to appeal the action to the city board of appeals. The appeal shall be filed in writing within thirty (30) days of the date of official transmittal of the final decision or determination to the applicant, shall state clearly the grounds on which the appeal is based and shall be processed in the manner prescribed for hearing administrative appeals contained in chapter 24 of the City Code.

Sec. 8-42. Records, Reports, Sampling, and Analysis.

- a) If the city requires the owner or operators of any property to prepare and implement a site control plan to mitigate and eliminate pollution caused by activities at the site, the city may require the owner or operator, in compliance with the plan, to:
- 1) Maintain records to demonstrate compliance.
 - 2) Prepare and file reports necessary to demonstrate compliance; and
 - 3) Sample and provide physical, biological, or chemical analysis of discharges by using:
 - i. A state certified laboratory; and
 - ii. Sampling methods where, when and how the city requires.
- b) Upon request of the City Manager or his designee, the owner or operator must provide any records, manifests, and invoices for review. If the documents are not available at the time of the request, the owner or operator must produce the records within the time designated by the city.

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ADOPTED this ____ day of _____, 2003 by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2003. APPROVED/VETOED by the Mayor of the City of Gaithersburg, this ____ day of _____, 2003.

Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2003, and that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the ____ day of _____, 2003. This Ordinance will become effective on the ____ day of _____, 2003.

David B. Humpton, City Manager